



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
SOUTH PACIFIC DIVISION, CORPS OF ENGINEERS

333 Market Street, Room 923  
San Francisco, California 94105-2195

FEB 17 2004

Directorate of Regional  
Programs

Steven L. Spangle, Field Supervisor  
U.S. Fish & Wildlife Service  
Arizona Ecological Services Field Office  
2321 West Royal Palm Road, Suite 103  
Phoenix, Arizona 85021-4951

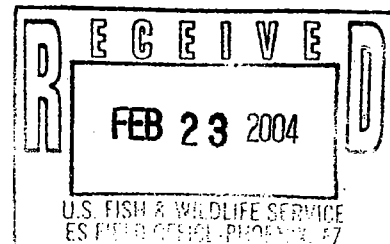
Dear Mr. Spangle:

Thank you for your letter of January 28, 2004 requesting that the U.S. Army Corps of Engineers serve as a cooperating agency in accordance with 40 CFR Parts 1501.6 and 1501.7 for the preparation of an environmental assessment (EA) to evaluate the effects of designating critical habitat for the endangered Southwestern Willow Flycatcher (*Empidonax traillii extimus*).

We agree to serve as a cooperating agency for the preparation of this EA, and any subsequent environmental impact statement, for the proposed action. The Corps of Engineers area of expertise or jurisdiction by law is generally flood control, navigation, hydropower, and Corps of Engineers regulatory responsibilities under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). We also have expertise in environmental planning and ecosystem restoration, and in particular, have generated a comprehensive body of knowledge on the ecology and habitat requirements of Southwestern Willow Flycatchers along the South Fork Kern River, in Kern County, California.

We will make every reasonable effort, within manpower and financial constraints, to comply with the cooperating agency responsibilities outlined in 40 CFR Part 1501.6 and 33 CFR Parts 230.16(b) and 325, Appendix B (NEPA Implementation Procedures for the Regulatory Program).

It is understood that our participation as a cooperating agency does not constitute an advance agreement with the U.S. Fish & Wildlife Service concerning whether or not specific Corps of Engineers actions will impact the endangered Southwestern Willow Flycatcher or any designated critical habitat, nor does our participation constitute an advance agreement with any conclusions the U.S. Fish & Wildlife Service may reach regarding the extent or location of any designated critical habitat.

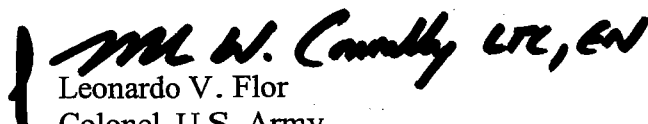


In response to your request for comments concerning the scope of the EA (69 FR 2940, January 21, 2004), we have formulated some preliminary comments (attached) and will likely provide additional comments and information for your consideration by March 8, 2004.

Because these efforts will likely span portions of three Corps of Engineers districts (Albuquerque, Los Angeles, and Sacramento) in the South Pacific Division, our primary point of contact will be Mr. Wade L. Eakle, Ecologist and Regulatory Program Manager.

Mr. Eakle will closely coordinate with all interested elements in SPD and our districts in fulfilling our cooperating agency responsibilities. He can be reached at (415) 977-8030, and by e-mail at [Wade.L.Eakle@spd02.usace.army.mil](mailto:Wade.L.Eakle@spd02.usace.army.mil).

Sincerely,

  
Leonardo V. Flor  
Colonel, U.S. Army  
Acting Commander

Copies furnished:

CESPA-DE  
CESPK-DE  
CESPL-DE

**U.S. Army Corps of Engineers  
South Pacific Division**

**Preliminary Comments to Notice of Scoping Meetings and Intent to Prepare an  
Environmental Assessment for the Proposed Designation of Critical Habitat for the  
Southwestern Willow Flycatcher (69 FR 2940, January 21, 2004).**

It will be important to evaluate the effects of critical habitat designation on Corps of Engineers owned and operated, multiple-purpose projects including, but not limited, to the following reservoirs and dams in the Southwest:

**Albuquerque District**

Colorado – John Martin Lake, Arkansas River; Trinidad Lake, Purgatoire River.

New Mexico – Abiquiu Lake, Chama River; Cochiti Lake, Rio Grande; Conchas Lake, Canadian and Conchas rivers; Santa Rosa Lake, Pecos River.

**Los Angeles District**

California – Los Angeles County Drainage Area including Sepulveda, Hansen, Lopez, Santa Fe, Whittier Narrows, Brea, and Fullerton dams; Santa Ana River Drainage Basin including San Antonio, Prado, and Carbon Canyon dams; Mojave River Dam.

Arizona – Lower Colorado River Drainage Basin including Alamo, Painted Rock, and Whitlow Ranch dams.

Nevada – Clover Creek Drainage Basin including Pine Canyon and Mathews Canyon dams.

Section 7 Projects (flood control regulation only) – Hoover Dam, Colorado River, Arizona/Nevada; Modified Roosevelt Dam, Salt River, Arizona; Tat Momolikot Dam, Arizona; Twitchell Dam, Cuyama River, California.

**Sacramento District**

California – Eastman Lake and Buchanan Dam, Chowchilla River; Hensley Lake and Hidden Dam, Fresno River; Pine Flat Lake and Dam, Kings River; Lake Kaweah and Terminus Dam, Kaweah River; Success Lake and Dam, Tule River; Isabella Lake and Dam, Kern River.

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## Regulatory Program

The U.S. Army Corps of Engineers annually evaluates more than 3,000 Department of the Army permit applications in the three Corps of Engineers districts and seven states most likely to be affected by critical habitat designation for the endangered Southwestern Willow Flycatcher.

Federal jurisdiction in waters of the United States under Section 404 of the Clean Water Act will likely overlap many areas proposed for critical habitat designation. The lateral extent of Clean Water Act jurisdiction in non-tidal waters lacking adjacent wetlands is the ordinary high water mark (OHWM). We are currently developing suitable OHWM indicators for the arid Southwest and would suggest the following for your consideration:

Lichvar, R.W. and J.S. Wakeley, Eds. 2004. Review of Ordinary High Water Mark Indicators for Delineating Arid Streams in the Southwestern United States. U.S. Army Engineer Research and Development Center, Technical Report 04-1. 127 p.

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